

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Corwin	Team: Squad #10	CCRB Case #: 202003847	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2020 10:45 PM, Tuesday, 07/07/2020 9:21 AM	Location of Incident: The vicinity of East 14th Street and 5th Avenue in Manhattan, 100 Church Street in Manhattan	Precinct: 13	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Wed, 06/03/2020 9:45 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 06/03/2020 9:45 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. POM Brian Mahon	26892	955116	NARCBMN

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Force: On May 30, 2020, in the vicinity of 14th Street and 5th Avenue in Manhattan, an officer used physical force against § 87(2)(b)	
B. An officer	Force: On May 30, 2020, in the vicinity of 14th Street and 5th Avenue in Manhattan, an officer used physical force against § 87(2)(b)	
C.POM Brian Mahon	Force: On May 30, 2020, in the vicinity of 14th Street and 5th Avenue in Manhattan, Police Officer Brian Mahon struck § 87(2)(b) with a baton.	
D.POM Brian Mahon	Force: On May 30, 2020, in the vicinity of 14th Street and 5th Avenue in Manhattan, Police Officer Brian Mahon struck § 87(2)(b) with a baton.	
E.POM Brian Mahon	Discourtesy: On May 30, 2020, in the vicinity of 14th Street and 5th Avenue in Manhattan, Police Officer Brian Mahon spoke discourteously to § 87(2)(b)	
F.POM Brian Mahon	Force: On May 30, 2020, in the vicinity of 14th Street and 5th Avenue in Manhattan, Police Officer Brian Mahon used physical force against an individual.	
G.POM Brian Mahon	Force: On May 30, 2020, in the vicinity of 14th Street and 5th Avenue in Manhattan, Police Officer Brian Mahon used physical force against § 87(2)(b)	
H.POM Brian Mahon	Untruthful Stmt.: On July 07, 2020, at 100 Church Street in Manhattan, Police Officer Brian Mahon provided a false official statement to the CCRB.	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	

Case Summary

On June 3, 2020, § 87(2)(b) filed the following complaint on the CCRB website and on June 10, 2020, § 87(2)(b) filed a duplicate complaint, also via the CCRB website.

On May 30, 2020, § 87(2)(b) and a friend, § 87(2)(b) were protesting in the vicinity of Union Square in Manhattan. At approximately 10:20 pm, police officers began advancing toward protesters in the Union Square area and § 87(2)(b) along with other protesters, moved west on 14th Street. § 87(2)(b) was walking backwards with his hands up, when an officer allegedly pushed him in the arm with a baton, causing § 87(2)(b) to fall (**Allegation A: Force: Physical Force:** § 87(2)(g) § 87(2)(b) got up and continued walking west on 14th Street and another officer allegedly pushed him in the torso, causing § 87(2)(b) to crash into a light pole on the street (**Allegation B: Force: Physical Force:** § 87(2)(g) § 87(2)(b)).

The protesters moving west reconvened at the intersection of 14th Street and 5th Avenue before a line of officers advanced on the group. Police Officer Brian Mahon, of Manhattan North Narcotics, ran up to § 87(2)(b) and, holding his baton in both hands, struck § 87(2)(b)'s arm with the baton (**Allegation C: Force: Nightstick as Club:** § 87(2)(g) § 87(2)(b)). He then swung his baton at § 87(2)(b) hitting him in the back (**Allegation D: Force: Nightstick as Club:** § 87(2)(g) § 87(2)(b)). PO Mahon then yelled, "Get the fuck out of here," at § 87(2)(b) (**Allegation E: Discourtesy: Word:** § 87(2)(g) § 87(2)(b)). An unidentified civilian stood in between PO Mahon and § 87(2)(b) and PO Mahon pushed her in the upper body (**Allegation F: Force: Physical Force:** § 87(2)(g) § 87(2)(b)). § 87(2)(b) then walked away from PO Mahon, who pushed him in the back (**Allegation G: Force: Physical Force:** § 87(2)(g) § 87(2)(b)) before an NYPD supervisor pulled PO Mahon away.

On July 07, 2020, at approximately 9:21 a.m., at 100 Church Street in Manhattan, PO Mahon made a False Official statement during his CCRB interview (**Allegation H: Untruthful Statement: False Official Statement:** § 87(2)(g) § 87(2)(b)).

§ 87(2)(g), § 87(4-b)

The investigation obtained cell phone video taken by § 87(2)(b) (**Board Review 01 and 02**). PO Mahon was not equipped with BWC during the incident, and a request for BWC footage of the incident to the NYPD returned negative results. Footage from a Republic Bank where the incident took place did not capture this incident.

Findings and Recommendations

Allegation A: Force: On May 30, 2020, in the vicinity of 14th Street and 5th Avenue in Manhattan, an officer used physical force against § 87(2)(b)

Allegation B: Force: On May 30, 2020, in the vicinity of 14th Street and 5th Avenue in Manhattan, an officer used physical force against § 87(2)(b)

§ 87(2)(b) provided a statement to the investigation on July 06, 2020 (**Board Review 03**). He stated that at approximately 10:20 pm, police officers present in Union Square lined up and surged towards a large group of protesters, pushing them west. Many of the protesters ran away from the line of officers. This happened multiple times and in some of the disruption, § 87(2)(b) and § 87(2)(b) were separated. Somewhere on 14th Street between Union Square and 5th Avenue (closer to Union Square), § 87(2)(b) was walking backwards with his hands up when an officer ran up to

him and, gripping his baton in both hands, pushed him on the arm. The push caused § 87(2)(b) to fall backwards on the ground. § 87(2)(b) got up and continued moving west, when another wave of officers surged forward into the crowd of protesters. A different officer pushed § 87(2)(b) in the torso, also with his baton gripped in both of his hands. § 87(2)(b)'s momentum then caused him to crash into a light pole on the street.

The investigation requested BWC from the NYPD, describing § 87(2)(b)'s appearance, but received negative results (**Board Review 04**). § 87(2)(b) did not film these allegations and no other video was obtained that captured them. § 87(2)(b) did not give his name to either of these officers and he was not taken into custody, so no documentation would have been prepared using § 87(2)(b)'s name. Additionally, § 87(2)(b) did not know anyone in the vicinity that observed him being pushed. § 87(2)(b) observed the first officer that pushed him, an approximately 6'0" tall, uniformed white male with a medium build, but did not see this officer's shield number or name. He did not get a look at the second officer that pushed him. § 87(2)(b)'s descriptions of the officers did not provide the investigation with enough detail to narrow down potential subject officers based on available police documents. A detailed roster from Patrol Borough Manhattan South listed approximately 200 officers assigned to the protest broken down by command. However, the documents did not include post maps or specific assignments that would have allowed the investigation to narrow down the pool of potential subjects.

§ 87(2)(g)

Allegation C: Force: On May 30, 2020, in the vicinity of 14th Street and 5th Avenue in Manhattan, Police Officer Brian Mahon struck § 87(2)(b) with a baton.

Allegation D: Force: On May 30, 2020, in the vicinity of 14th Street and 5th Avenue in Manhattan, Police Officer Brian Mahon struck § 87(2)(b) with a baton.

Allegation E: Discourtesy: On May 30, 2020, in the vicinity of 14th Street and 5th Avenue in Manhattan, Police Officer Brian Mahon spoke discourteously to § 87(2)(b)

Allegation F: Force: On May 30, 2020, in the vicinity of 14th Street and 5th Avenue in Manhattan, Police Officer Brian Mahon used physical force against an individual.

Allegation G: Force: On May 30, 2020, in the vicinity of 14th Street and 5th Avenue in Manhattan, Police Officer Brian Mahon used physical force against § 87(2)(b)

§ 87(2)(b)'s 11 second cell phone video (**Board Review 01**), begins with dozens of officers running west, toward the gathered protesters. Among these officers is PO Mahon, who runs towards § 87(2)(b) who is standing on the sidewalk with his cell phone in his right hand and his left hand in the air. Without breaking stride PO Mahon, holding his baton horizontally, forcefully rams his baton into § 87(2)(b)'s upper left arm causing § 87(2)(b)'s momentum to carry him out of the camera's frame. § 87(2)(b) now on the sidewalk, turns his back to PO Mahon, who then swings his baton at § 87(2)(b)'s back. At 00:09 a thud sound can be heard during the swing. PO Mahon then yells at § 87(2)(b) to "get the fuck out." § 87(2)(b) moves away from PO Mahon, and an unidentified woman stands in between PO Mahon and § 87(2)(b). PO Mahon then pushes her upper body with both hands. § 87(2)(b) turns his back to PO Mahon and starts walking away and PO Mahon pushes him in the back with his hands. A plainclothes male officer in a gray t-shirt, sunglasses, a baseball cap, and a bandanna covering his face appears to reach toward PO Mahon's back. An unidentified supervisor then grabs PO Mahon's arm and pulls him away.

§ 87(2)(b) (**Board Review 05**) stated that while he was in Union Square, he heard police play a recorded message over loudspeakers telling the protesters to disperse and police officers formed a

line and advanced toward the crowd. In response, the crowd moved west, away from the officers who followed in a line behind the protesters. § 87(2)(b) did not hear any commands or orders from officers.

At the intersection of 14th Street and 5th Avenue, protesters stopped and started chanting. Then suddenly, the officers charged toward the protesters. § 87(2)(b) put his hands up, above his head and took a step forward to get on the sidewalk. He had his cellphone in one hand and the other hand was empty. PO Mahon ran up to him and yelled, “Move!” Before § 87(2)(b) had the chance to move, PO Mahon, who had one hand on each end of his baton, shoved the baton into § 87(2)(b)'s upper right arm very hard. § 87(2)(b) moved to the left, so that he was further onto the sidewalk and PO Mahon followed him and then struck him in the right side of his back with the baton. § 87(2)(b) then turned away from PO Mahon to try to get away from him. A female protester, who § 87(2)(b) did not know, moved between § 87(2)(b) and PO Mahon. § 87(2)(b) continued walking away from PO Mahon, who followed and hit him with the baton one more time on his left arm. § 87(2)(b) sustained bruising to his arm and back, of which he took pictures in the days or weeks following the incident (**Board Reviews 06, 07, and 08**). § 87(2)(b) sent these pictures to the CCRB on July 02, 2020.

§ 87(2)(b)'s statement was generally consistent with § 87(2)(b) although he did not mention the female protestor and added that he began recording when officers charged toward the protesters.

PO Mahon (**Board Review 09**) stated that at the intersection of 14th Street and 5th Avenue, unknown supervisors instructed officers to get in a line and arrest any civilians they were able to. From his crowd control training at the police academy, PO Mahon learned to disperse hostile crowds by yelling for individuals to move back and to push them with his baton if they failed to disperse. PO Mahon had been separated from officers in his command earlier on in the day and as a result was working with officers he did not know. After receiving these instructions, PO Mahon chased after a civilian he had previously observed throwing projectiles at officers, but after taking approximately five steps, § 87(2)(b) walked directly into PO Mahon's path and then lifted his hands up above his head. At this point, PO Mahon lost sight of the civilian he intended to arrest, who had run away into a crowd of protesters and was approximately 40 feet away.

PO Mahon screamed at § 87(2)(b) to move. § 87(2)(b) was just standing there, but this was no longer acceptable as it was past curfew and the protesters had been previously ordered to disperse. § 87(2)(b) bladed his body away from PO Mahon, who then held his baton horizontally and used it to push § 87(2)(b) in the shoulder and § 87(2)(b) took a few steps backwards. PO Mahon pushed § 87(2)(b) with his baton because § 87(2)(b) was not dispersing. He had been taught at the police academy to push people with his baton to get them to disperse. Additionally, § 87(2)(b) was blocking PO Mahon from getting to and arresting the civilian he observed throwing projectiles at officers. When asked why he did not just go around § 87(2)(b) PO Mahon said, “I was likely not going to get that person (the person throwing projectiles), and now this person § 87(2)(b) is intentionally interfering and should be placed under arrest as well.”

§ 87(2)(b) then attempted to walk around PO Mahon in the opposite direction than the one that officers and other protesters were running in. PO Mahon had to move to his side in order to stop him from walking that direction. A female civilian attempted to stand in between PO Mahon and § 87(2)(b) PO Mahon used his right hand and pushed her away with minimal force. PO Mahon then swung his baton at § 87(2)(b) but the baton did not actually hit him, and PO Mahon did not intend to hit him with the baton. Instead, he swung his baton at a low angle as part of a technique taught at the police academy called “low clear” to clear space between himself and other

individuals. His reasoning for doing this was to, “Stop § 87(2)(b) from walking back towards the other officers, trying to clear a little space, and trying to get him to turn around and leave.” When PO Mahon was shown cell phone footage of the alleged baton strike and it was pointed out that a thud sound could be heard when he swung the baton, PO Mahon said that if he had actually struck § 87(2)(b) he would have broken bones given how fast he swung his baton. PO Mahon stated that his final push of § 87(2)(b) was also intended to get § 87(2)(b) to disperse.

PO Mahon acknowledged that he told § 87(2)(b) to “Get the fuck out of here.” He stated that he used profanity because the scene was chaotic and extremely loud, and he was emotional from working protest details for several hours in which he observed police vehicles set on fire and protesters throwing objects at officers. When asked why he did not arrest § 87(2)(b) PO Mahon said he did not have any handcuffs on his person because he used his pair for an arrest earlier in the night and had not had a chance to obtain replacements. He was also not equipped with flex cuffs. His plan would have been for other officers to come in and handcuff § 87(2)(b). However, an unknown supervisor in a white shirt, came up to him and told him to fall back. PO Mahon was unsure of why this supervisor gave him this instruction.

It was undisputed that PO Mahon yelled at § 87(2)(b) to “get the fuck out,” pushed his baton into him, pushed the unidentified female civilian, and pushed § 87(2)(b) again in the back. However, while § 87(2)(b) and § 87(2)(b) stated that PO Mahon struck § 87(2)(b) in the back with the baton, PO Mahon said he intentionally missed § 87(2)(b) with the baton. Eight seconds into the cell phone video taken by § 87(2)(b) PO Mahon swings his baton in very close proximity to § 87(2)(b) and while § 87(2)(b)'s back was to the camera, given the angle that PO Mahon swung his baton, it looks like the baton hit § 87(2)(b)'s lower middle back. Additionally, a thud sound could be heard in the video at the point of alleged contact. On July 2, 2020, § 87(2)(b) also provided the CCRB with a picture of a bruise located on his lower back which he took in the days or weeks following the incident (**Board Review 08**). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Patrol Guide Procedure 221-01 (Board Review 10) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application of force must be reasonable under the circumstances. In determining whether the use of force is reasonable members of service should consider the following:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject's violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

PO Mahon stated that he first pushed his baton into § 87(2)(b)'s arm in order to get him to disperse. While a push may have been permissible to get § 87(2)(b) to leave the location he was

no longer permitted to be in § 87(2)(g) [REDACTED]
[REDACTED] As shown in the cell phone video, at the time PO Mahon first struck § 87(2)(b) [REDACTED] with his baton, § 87(2)(b) [REDACTED] was stationary, with his hands up, and engaged in no action that made him a threat to any officers or civilians. Given how § 87(2)(b) [REDACTED] was acting at the time of this use of force, the fact that § 87(2)(b) [REDACTED] was a part of a protest that was legally obligated to disperse § 87(2)(g) [REDACTED]
[REDACTED] Nevertheless, PO Mahon struck § 87(2)(b) [REDACTED] hard enough to make him stumble back several feet and cause heavy bruising (**Board Reviews 06 and 07**), § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

As PO Mahon denied striking § 87(2)(b) [REDACTED] in the back with his baton and he thus provided no justification for doing so. The video showed that this second strike took place only three seconds after the first strike discussed in **Allegation C**. At this point, § 87(2)(b) [REDACTED] still presented no threat to PO Mahon or anyone else nor had he had a sufficient opportunity to disperse. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

PO Mahon stated that he pushed the unidentified woman with minimal force because she stood between him and § 87(2)(b) [REDACTED]. This woman stood in front of § 87(2)(b) [REDACTED] to shield him after PO Mahon struck him twice with his baton. § 87(2)(g) [REDACTED]
[REDACTED] this individual was not obstructing PO Mahon from taking justifiable police action, § 87(2)(g) [REDACTED]
[REDACTED]

PO Mahon stated that his final push of § 87(2)(b) [REDACTED] was also intended to get § 87(2)(b) [REDACTED] to disperse. As shown in the video, § 87(2)(b) [REDACTED] was already walking away, when PO Mahon pushed him in the back. § 87(2)(g) [REDACTED]
[REDACTED] an NYPD supervisor appears to intervene to escort PO Mahon away at this point § 87(2)(g) [REDACTED]
[REDACTED]

Patrol Guide Procedure 200-02 states that the department is committed to treating every citizen with compassion, courtesy, professionalism, and respect. Officers are expected to maintain a higher standard of integrity than in generally expected of others (**Board Review 11**).

DCT Case 2017-17276 states that language that would normally be inappropriate when dealing with civilians may be excused in the course of a violent confrontation (**Board Review 12**).

PO Mahon stated that he used profanity toward § 87(2)(b) [REDACTED] because the setting was chaotic and loud. While various aspects of the protest and setting could fairly be characterized as chaotic, loud, stressful, or violent, the cell phone video showed that § 87(2)(b) [REDACTED] was not engaged in any violent behavior and was not aggressive towards PO Mahon or any other officers or civilians and was merely standing on the sidewalk when PO Mahon spoke discourteously. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

Allegation H: Untruthful Statement: On July 07, 2020, at 100 Church Street in Manhattan,

Police Officer Brian Mahon provided a false official statement to the CCRB.

In his CCRB statement, PO Mahon said, per his crowd control training, he intentionally swung his baton at § 87(2)(b) so that the baton did not actually hit him in order to get him to disperse. While at the police academy, officers practiced using their batons in a low swinging motion (a low clear) without making contact while yelling, “get back.” When shown the cell phone video of the incident, PO Mahon confirmed his earlier statement and denied making any contact with § 87(2)(b) when he swung his baton. PO Mahon stated that if he had hit § 87(2)(b) with his baton, it would have caused broken bones. PO Mahon also pointed out that § 87(2)(b) had no obvious reaction to PO Mahon swinging his baton, indicating that the baton did not hit him. Additionally, PO Mahon indicated that prior to his interview, he was aware of the video as someone he knew saw it online and sent it to him.

§ 87(2)(b)'s cell phone video (**Board Review 01**) shows that PO Mahon swung his baton while he is within approximately two feet of § 87(2)(b). He winds up with the baton over his shoulder and in a downward diagonal motion, swings his baton forcefully in the direction of § 87(2)(b)'s back. He did not swing his baton in a “low swinging motion.” Additionally, at the point of alleged contact, a thud can be heard in the video. Consequently, the CCRB determined that PO Mahon struck § 87(2)(b) with his baton while PO Mahon was standing in close proximity to him. § 87(2)(b)

According to Patrol Guide Procedure 203-08, a false official statement is an intentional statement that a member of the service knows to be untrue, which is material to the outcome of an investigation, proceeding, or other matter in connection with which the statement was made.

A material fact is defined as a significant fact that a reasonable person would recognize as relevant to, or affecting, the subject matter of the issue at hand, including any foreseeable consequences, or establishment of the elements of some proscribed conduct. It is a fact that is essential to the determination of the issue and the suppression, omission, or alteration of such fact would reasonably result in a different decision or outcome. A material fact may be distinguished from an insignificant, trivial, or unimportant detail (**Board Review 14**).

In DCT Case Number 2017-18331, a Lieutenant was determined to have made statements that were knowingly misleading at the time she made them, and that the statements made were material false statements because they went beyond a mere denial of misconduct and instead offered an alternative factual scenario which, if believed, would absolve her of responsibility (**Board Review 15**).

In DCT Case Number 2016-16097 the court held that in order to prove a false statement, it must be demonstrated that the statement was not only false, but also was not a mere denial of an administrative charge of misconduct. This is in contrast to statements that create a “false description of events” (**Board Review 23**).

PO Mahon's statement, that he swung his baton at § 87(2)(b) in a low swinging motion to intentionally miss him and create space as he was trained to do, was contradicted by video evidence showing PO Mahon winding up over his shoulder and swinging his baton forcefully in a downward motion followed by a thud consistent with a baton making contact with another object § 87(2)(b). This statement is material in that it is at the core of the inquiry into his use of force against § 87(2)(b). When the video was played for PO Mahon during his CCRB interview, he repeated his previous assertion that he did not actually strike § 87(2)(b) with his baton. § 87(2)(g)

§ 87(2)(g)

Additionally, PO Mahon identified other elements of the video as providing extra proof that his assertion was correct, characterizing § 87(2)(b)'s reaction and lack of serious injury as inconsistent with a baton strike. However, the strength of the video evidence, in addition to the bruising suffered by § 87(2)(b) indicates that PO Mahon struck him with his baton. Given that PO Mahon had ample time to review the video prior to his CCRB interview and made repeated attempts to re-frame what the video showed to support his alternative factual scenario, it is more likely than not that PO Mahon knew his statement was untrue given the strength of the video evidence, and was attempting to cast doubt on what actually occurred.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) is a party (**Board Review 19**).
- This is the first CCRB complaint to which § 87(2)(b) is a party (**Board Review 20**).

- PO Mahon has been a member of service for seven years and has been a subject in nine CCRB complaints and 36 allegations.
 - CCRB Case 201804513 involved substantiated allegations of an entry of premises, a frisk, and an abuse of authority-other. The board recommended Command Discipline A and the NYPD has not yet imposed discipline.
 - CCRB Case 201808002 involved a substantiated allegation of a frisk and a stop. The board recommended Command Discipline B and the NYPD imposed Command Discipline A.
 - § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- A request for any Notice of Claims filed in relation to this incident was sent to the Comptroller's Office. The results will be added to the case file upon receipt.

- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]

Squad No.: 10

Investigator:	<u>Matthew Corwin</u> Signature	<u>Inv. Corwin</u> Print Title & Name	<u>09/23/2020</u> Date
Squad Leader:	<u>Eric Rigie</u> Signature	<u>IM Eric Rigie</u> Print Title & Name	<u>9/23/2020</u> Date
Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date